IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4881 OF 2007

M/s.Binod Steels .....Petitioners

Vs.

The Union of India & Ors.....Respondents

Mr.V.Sreedharan with Mr. Prakash Shah & Mr. J.Motwani, for P.D.S.Legal for the Petitioners

Mr.P.S. Jetly with Mr. S.D. Bhosale, for Respondents

CORAM : F.I. REBELLO &

R.V. MORE,JJ.

DATED : 4TH JULY, 2007

P.C.

. Rule. Heard forthwith. The petitioner has approached this Court against the order of the Tribunal which has directed pre-deposit of a sum of Rs.20.00 lakhs and on such deposit as set out the pre-deposit of the balance duty and penalty to stand waived and recovery thereof stayed pending the appeal. At the hearing of this Appeal on behalf of the petitioner learned Counsel contends that there are two questions to be considered by the Tribunal, viz:-

1.Whether the cutting of the steel plates will amount to manufacture?

2.Whether it was open to the authorities considering the period and the earlier statement recorded of the

owner of the petitioner to have charged and imposed the duty.

It is also pointed out that the petitioner has a small unit and he should not be denied the right of hearing as in the instant case it would not be possible for the petitioner to pay the amount as ordered considering that the same has not collected from the persons to whom the goods were supplied.

2. Considering the above, in our opinion, this is a fit case to waive the deposit. In the light of that we direct the Tribunal to decide the appeal on merits and in the meantime the respondents not to take any steps to make recovery of the duty and penalty as imposed. The petitioner, however, to file an undertaking before the Tribunal that in the event the Appeal is dismissed he will be bound to pay the amount as claimed subjected to whatever legal rights the petitioners have. The undertaking to be filed within two weeks from today.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**